MONTANA LEGISLATIVE HISTORY

Chapter 225 1993

Bill H 171 S _____ Original bill & history X C

H. Committee on NATURAL RESOURCES			S. Committee on NATURAL RESOURCES		
Hearing Date(s)	1/22	X C	Hearing Date(s) & EXEC. ACTION	3/12	C
EXEC. ACTION	1/27	X C			C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

4/03	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	47	0
4/17	SIGNED BY SPEAKER		
4/17	SIGNED BY PRESIDENT		
4/20	TRANSMITTED TO GOVERNOR		
4/22	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 475		
	EFFECTIVE DATE: 10/01/93		

HB 170 INTRODUCED BY GILBERT

REVISE MEMBERSHIP ON BOARD OF AERONAUTICS

1/14	INTRODUCED		
1/14	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
1/14	FIRST READING		
1/14	FISCAL NOTE REQUESTED		
1/19	HEARING		
1/20	FISCAL NOTE RECEIVED		
1/20	FISCAL NOTE PRINTED		
1/20	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/22	2ND READING PASSED	83	17
1/25	3RD READING PASSED	81	16
	TRANSMITTED TO SENATE		
1/27	FIRST READING		
1/27	REFERRED TO HIGHWAYS & TRANSPORTATION		
2/02	HEARING		
2/09	COMMITTEE REPORT—BILL CONCURRED		
2/11	2ND READING CONCURRED AS AMENDED	49	0
2/12	3RD READING CONCURRED	49	1
	RETURNED TO HOUSE WITH AMENDMENTS		
3/31	2ND READING AMENDMENTS CONCURRED	93	6
4/02	3RD READING AMENDMENTS CONCURRED	95	3
4/07	SIGNED BY SPEAKER		
4/13	SIGNED BY PRESIDENT		
4/14	TRANSMITTED TO GOVERNOR		
4/19	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 394		
	EFFECTIVE DATE: 10/01/93		

HB 171 INTRODUCED BY M. HANSON, ET AL.

REVISE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT

BY REQUEST OF DEPARTMENT OF STATE LANDS

1/14	INTRODUCED		
1/14	REFERRED TO NATURAL RESOURCES		
1/14	FIRST READING		
1/14	FISCAL NOTE REQUESTED		
1/19	FISCAL NOTE RECEIVED		
1/19	FISCAL NOTE PRINTED		
1/22	HEARING		
1/29	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/01	2ND READING PASSED	91	6
2/03	3RD READING PASSED	86	10
	TRANSMITTED TO SENATE		
2/04	FIRST READING		
2/04	REFERRED TO NATURAL RESOURCES		
3/12	HEARING		
3/16	COMMITTEE REPORT—BILL CONCURRED		
3/18	2ND READING CONCURRED	49	0

3/19	3RD READING CONCURRED	47	0
	RETURNED TO HOUSE		
3/24	SIGNED BY SPEAKER		
3/25	SIGNED BY PRESIDENT		
3/25	TRANSMITTED TO GOVERNOR		
3/30	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 225		
	EFFECTIVE DATE: 10/01/93		

HB 172 INTRODUCED BY WANZENRIED, ET AL.

REQUIRE PUBLIC SERVICE COMMISSION TO SET MINIMUM RATE FOR CLASS E MOTOR CARRIERS

1/14	INTRODUCED		
1/14	REFERRED TO HIGHWAYS & TRANSPORTATION		
1/14	FIRST READING		
2/12	TABLED IN COMMITTEE		

HB 173 INTRODUCED BY KADAS

ELIMINATE REQUIREMENT FOR VISUAL, AURAL, AND OTHER EDUCATIONAL MEDIA LIBRARY

1/14	INTRODUCED		
1/14	REFERRED TO EDUCATION & CULTURAL RESOURCES		
1/14	FIRST READING		
1/20	HEARING		
1/22	TABLED IN COMMITTEE		
1/26	FISCAL NOTE REQUESTED		
2/01	FISCAL NOTE RECEIVED		
2/01	FISCAL NOTE PRINTED		

HB 174 INTRODUCED BY CLARK, ET AL.

ALLOW ARBITRATION RIGHTS FOR DEPUTY SHERIFFS AND POLICE OFFICERS

1/14	INTRODUCED		
1/14	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
1/14	FIRST READING		
1/19	HEARING		
1/23	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/26	2ND READING PASSED	98	0
1/28	3RD READING PASSED	100	0
	TRANSMITTED TO SENATE		
1/30	FIRST READING		
1/30	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
2/11	HEARING		
2/11	TABLED IN COMMITTEE		
3/19	MINORITY COMMITTEE REPORT ADOPTED—BILL CONCURRED AS AMENDED		
3/23	2ND READING CONCURRED	34	15
3/24	3RD READING CONCURRED	36	14
	RETURNED TO HOUSE WITH AMENDMENTS		
4/01	2ND READING AMENDMENTS CONCURRED	91	7
4/02	3RD READING AMENDMENTS CONCURRED	92	6
4/13	SIGNED BY SPEAKER		
4/14	SIGNED BY PRESIDENT		
4/16	TRANSMITTED TO GOVERNOR		
4/21	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 468		
	EFFECTIVE DATE: 10/01/93		

HOUSE BILL NO. 171

INTRODUCED BY M. HANSON, REHBEIN, DEVLIN
BY REQUEST OF THE DEPARTMENT OF STATE LANDS

IN THE HOUSE

JANUARY 14, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
JANUARY 29, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 30, 1993	PRINTING REPORT.
FEBRUARY 1, 1993	SECOND READING, DO PASS.
FEBRUARY 2, 1993	ENGROSSING REPORT.
FEBRUARY 3, 1993	THIRD READING, PASSED. AYES, 86; NOES, 10.
FEBRUARY 4, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 4, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
MARCH 16, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 17, 1993	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
MARCH 18, 1993	SECOND READING, CONCURRED IN.
MARCH 19, 1993	THIRD READING, CONCURRED IN. AYES, 47; NOES, 0.
	RETURNED TO HOUSE.

IN THE HOUSE

MARCH 20, 1993	RECEIVED FROM SENATE.
	SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

House BILL NO. 171

INTRODUCED BY Jill Hanson, Ira, Devlin

BY REQUEST OF THE DEPARTMENT OF STATE LANDS

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT TO COMPLY WITH FEDERAL LAW AND REGULATIONS; AMENDING THE DEFINITION OF "PROSPECTING"; EXPANDING THE AUTHORITY TO DENY A PERMIT ON FEDERAL LAND OR BASED ON CURRENT VIOLATIONS; PROHIBITING COAL MINING ON CERTAIN FEDERAL LANDS; AND AMENDING SECTIONS 82-4-203, 82-4-226, AND 82-4-227, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 82-4-203, MCA, is amended to read:

"82-4-203. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Abandoned" means an operation where no mineral is being produced and where the department determines that the operation will not continue or resume.

(2) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities; but the term does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

(3) "Aquifer" means any geologic formation or natural zone beneath the earth's surface that contains or stores water and transmits it from one point to another in quantities which permit or have the potential to permit economic development as a water source.

(4) "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited and includes all land overlying any tunnels, shafts, or other excavations used to extract the mineral, lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral, processing facilities at or near the mine site or other mine associated facilities, waste deposition areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or underground mining, and all activities necessary and incident to the reclamation of such operations.

(5) "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.

(6) "Board" means the board of land commissioners

provided for in Article X, section 4, of the constitution of this state.

(7) "Coal conservation plan" means the planned course of conduct of a strip- or underground-mining operation to include plans for the removal and utilization of minable and marketable coal located within the area planned to be mined.

(8) "Coal preparation" means the chemical or physical processing of coal and its cleaning, concentrating, or other processing or preparation. The term does not mean the conversion of coal to another energy form or to a gaseous or liquid hydrocarbon, except for incidental amounts that do not leave the plant, nor does the term mean processing for other than commercial purposes.

(9) "Coal preparation plant" means a commercial facility where coal is subject to coal preparation. The term includes commercial facilities associated with coal preparation activities but is not limited to loading buildings, water treatment facilities, water storage facilities, settling basins and impoundments, and coal processing and other waste disposal areas.

(10) "Commissioner" means the commissioner of state lands provided for in 2-15-3202.

(11) "Contour strip mining" means that strip-mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along

the side of the slope and entrance is made to the seam by excavating a bench or table cut at and along the site of the seam outcropping with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.

(12) "Degree" means from the horizontal and in each case is subject to a tolerance of 5% error.

(13) "Department" means the department of state lands provided for in Title 2, chapter 15, part 32.

(14) "Failure to conserve coal" means the nonremoval or nonutilization of minable and marketable coal by an operation, provided that the nonremoval or nonutilization of minable and marketable coal in accordance with reclamation standards established by the department ~~shall~~ may not be considered failure to conserve coal.

(15) "Fill bench" means that portion of a bench or table which is formed by depositing overburden beyond or downslope from the cut section as formed in the contour method of strip mining.

(16) "Imminent danger to the health and safety of the public" means the existence of any condition or practice or any violation of a permit or other requirement of this part in a strip- or underground-coal-mining and reclamation operation that could reasonably be expected to cause substantial physical harm to persons outside the permit area

before ~~such~~ the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not ~~expose himself or herself~~ willingly be exposed to the danger during the time necessary for abatement.

(17) "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale in the usual course of trade.

(18) "Method of operation" means the method or manner by which the cut, open pit, shaft, or excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed by the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land affected.

(19) "Minable coal" means that coal which can be removed through strip- or underground-mining methods adaptable to the location that coal is being mined or is planned to be mined.

(20) "Mineral" means coal and uranium.

(21) "Operation" means all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from and reclaiming a designated strip-mine or underground-mine area, including coal preparation plants, and all activities, including

excavation incident ~~thereto~~ to operations, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit.

(22) "Operator" means a person engaged in strip mining or underground mining who removes or intends to remove more than 10,000 cubic yards of mineral or overburden or a person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth by mining within 12 consecutive calendar months in any one location or a person engaged in operating a coal preparation plant.

(23) "Overburden" means all of the earth and other materials ~~which~~ that lie above a natural mineral deposit and also means ~~such~~ the earth and other material after removal from their natural state in the process of mining.

(24) "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state or federal government.

(25) "Prime farmland" means that land previously prescribed by the United States secretary of agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface-layer composition, susceptibility to flooding, and erosion characteristics and which historically has been used for intensive agricultural purposes and as defined in the Federal Register.

(26) "Prospecting" means the removal of overburden, core drilling, construction of roads, or any other disturbance of the surface for the purpose of determining the location, quantity, or quality of a natural mineral deposit; ~~and,--on areas--designated--unsuitable--for--coal--mining-pursuant-to 82-4-227--and--82-4-228,~~ the gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, geophysical, or other techniques necessary to determine the quality and quantity of overburden ~~and-coal~~ in an area; ~~and~~ or the gathering of environmental data to establish the conditions of an area before beginning strip- or underground-coal-mining and reclamation operations under this part.

(27) "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, planting, revegetation, and other work to restore an area of land affected by strip mining or underground mining under a plan approved by the department.

(28) "Remining" means conducting surface coal mining and reclamation operations that affect previously mined areas (for example, the recovery of additional mineral from existing gob or tailings piles).

(29) "Strip mining" means any part of the process followed in the production of mineral by the opencut method, including mining by the auger method or any similar method

~~which~~ that penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine ~~which~~ that enters the deposit from a surface excavation or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral. For the purposes of this part only, strip mining also includes remining and coal preparation. The terms "remining" and "coal preparation" are not included in the definition of "strip mining" for purposes of Title 15, chapter 35, part 1.

(30) "Subsidence" means a vertically downward movement of overburden materials resulting from the actual mining of an underlying mineral deposit or associated underground excavations.

(31) "Surface owner" means a person who holds legal or equitable title to the land surface and whose principal place of residence is on the land or who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affected by strip-mining operations or who receives directly a significant portion of ~~his~~ income, if any, from ~~such~~ farming or ranching operations or the state of Montana where the state owns the surface.

(32) "Topsoil" means the unconsolidated mineral matter naturally present on the surface of the earth that has been subjected to and influenced by genetic and environmental

factors of parent material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

(33) "Underground mining" means any part of the process followed in the production of a mineral such that vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata are utilized and includes mining by in situ methods.

(34) "Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of ~~his~~ a permit or any requirement of this part due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of ~~such~~ a permit or this part due to indifference, lack of diligence, or lack of reasonable care.

(35) "Waiver" means any document ~~which~~ that demonstrates the clear intention to release rights in the surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.

(36) "Written consent" means ~~such~~ a written statement as ~~is~~ executed by the owner of the surface estate, upon a form approved by the department, demonstrating that ~~such~~ the owner consents to entry of an operator for the purpose of

LC 0487/01

conducting strip-mining operations and that ~~such~~ the consent is given only to ~~such~~ strip-mining and reclamation operations ~~which~~ that fully comply with the terms and requirements of this part."

Section 2. Section 82-4-226, MCA, is amended to read:

"82-4-226. Prospecting permit. (1) ~~On~~ Except as provided in subsection (8) ~~and--after--March--1,--1973,~~ prospecting by any person on land not included in a valid strip-mining or underground-mining permit ~~shall--be~~ is unlawful without possessing a valid prospecting permit issued by the department as provided in this section. ~~No~~ A prospecting permit ~~shall~~ may not be issued until the person submits an application, the application is examined, amended if necessary, and approved by the department, and adequate reclamation performance bond is posted, all of which prerequisites must be done in conformity with the requirements of this part.

(2) An application for a prospecting permit ~~shall~~ must be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application ~~shall~~ must include among other things a prospecting map and a prospecting reclamation plan of substantially the same character as required for a surface-mining or underground-mining map and reclamation plan under this part. The department shall determine by

rules the precise nature of ~~such~~ the required prospecting map and reclamation plan. Any applicant who intends to prospect by means of core drilling shall specify the location and number of holes to be drilled, methods to be used in sealing aquifers, and ~~such~~ other information as may be required by the department. The applicant ~~must~~ shall state what types of prospecting and excavating techniques will be employed on the affected land. The application shall also include any other or further information the department may require.

(3) The application ~~shall~~ must be accompanied by a fee of $100. This fee ~~shall~~ must be used as a credit toward the strip-mining or underground-mining permit fee provided by this part if the area covered by the prospecting permit becomes covered by a valid surface-mining or underground-mining permit obtained before or at the time the prospecting permit expires.

(4) Before the department gives final approval to the prospecting permit application, the applicant shall file with the department a reclamation and revegetation bond in a form and in an amount as determined in the same manner for strip-mining or underground-mining reclamation and revegetation bonds under this part.

(5) In the event that the holder of a prospecting permit desires to strip mine or underground mine the area

covered by the prospecting permit and has fulfilled all the requirements for a strip-mining or underground-mining permit, the department may permit the postponement of the reclamation of the acreage prospected if that acreage is incorporated into the complete reclamation plan submitted with the application for a strip-mining or underground-mining permit. Any land actually affected by prospecting or excavating under a prospecting permit and not covered by the strip-mining or underground-mining reclamation plan ~~shall~~ must be promptly reclaimed.

(6) The prospecting permit ~~shall be~~ is valid for 1 year and ~~shall be~~ is subject to renewal, suspension, and revocation in the same manner as strip-mining or underground-mining permits under this part.

(7) The holder of the prospecting permit shall file with the department the same progress reports, maps, and revegetation progress reports as are required of strip-mining or underground-mining operators under this part.

(8) Prospecting that is not conducted in an area designated unsuitable for coal mining pursuant to 82-4-227 or 82-4-228 and that is not conducted for the purpose of determining the location, quality, or quantity of a natural mineral deposit is not subject to subsections (1) through (7). However, a person who conducts this prospecting shall

file with the department a notice of intent to prospect, containing the information required by the department, before commencing prospecting operations. If this prospecting substantially disturbs the natural land surface, it must be conducted in accordance with the performance standards of the department's rules regulating the conduct and reclamation of prospecting operations that remove coal. The department may inspect these prospecting and reclamation operations at any reasonable time."

Section 3. Section 82-4-227, MCA, is amended to read:

"**82-4-227. Refusal of permit.** (1) An application for a prospecting, strip-mining, or underground-mining permit or major revision ~~shall~~ may not be approved by the department unless, on the basis of the information set forth in the application, an onsite inspection, and an evaluation of the operation by the department, the applicant has affirmatively demonstrated that the requirements of this part and rules will be observed and that the proposed method of operation, backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, revegetation, or reclamation of the affected area can be carried out consistently with the purpose of this part. The applicant for a permit or major revision has the burden of establishing that ~~his~~ the application is in compliance with this part and the rules adopted under it.

(2) The department ~~shall~~ may not approve the application for a prospecting, strip-mining, or underground-mining permit where the area of land described in the application includes land having special, exceptional, critical, or unique characteristics or that mining or prospecting on that area would adversely affect the use, enjoyment, or fundamental character of neighboring land having special, exceptional, critical, or unique characteristics. For the purposes of this part, land is defined as having ~~such~~ these characteristics if it possesses special, exceptional, critical, or unique:

(a) biological productivity, the loss of which would jeopardize certain species of wildlife or domestic stock;

(b) ecological fragility, in the sense that the land, once adversely affected, could not return to its former ecological role in the reasonable foreseeable future;

(c) ecological importance, in the sense that the particular land has such a strong influence on the total ecosystem of which it is a part that even temporary effects felt by it could precipitate a system-wide reaction of unpredictable scope or dimensions; or

(d) scenic, historic, archaeologic, topographic, geologic, ethnologic, scientific, cultural, or recreational significance. (In applying this subsection, particular attention should be paid to the inadequate preservation

previously accorded Plains Indian history and culture.)

(3) The department may not approve an application for a strip- or underground-coal-mining permit or major revision unless the application affirmatively demonstrates that:

(a) the assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance has been made by the department and the proposed operation ~~thereof~~ of the mining operation has been designed to prevent material damage to the hydrologic balance outside the permit area; and

(b) the proposed strip- or underground-coal-mining operation would not:

(i) interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, excluding undeveloped rangelands that are not significant to farming on alluvial valley floors and those lands as to which the regulatory authority finds that if the farming that will be interrupted, discontinued, or precluded is of such small acreage as to be of negligible impact on the farm's agricultural production; or

(ii) materially damage the quantity or quality of water in surface water or underground water systems that supply these valley floors in subsection (3)(b)(i).

(4) Subsection (3)(b) does not affect those strip- or underground-coal-mining operations that in the year

preceding the enactment of Public Law 95-87 produced coal in commercial quantities and were located within or adjacent to alluvial valley floors or had obtained specific permit approval by the department to conduct strip- or underground-coal-mining operations within alluvial valley floors. If coal deposits are precluded from being mined under this subsection, the commissioner shall certify to the secretary of interior that the mineral owner or lessee may be eligible for participation in coal exchange programs pursuant to section 510(5) of Public Law 95-87.

(5) If the area proposed to be mined contains prime farmland, the department may not grant a permit to mine coal on the prime farmland unless it finds in writing that the applicant has the technological capability to restore the mined area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards of 82-4-232(3). Nothing in this subsection applies to any permit issued prior to August 3, 1977, or to any revisions or renewals thereof, or to any existing strip- or underground-mining operations for which a permit was issued prior to August 3, 1977.

(6) If the department finds that the overburden on any part of the area of land described in the application for a

prospecting, strip-mining, or underground-mining permit is such that experience in the state with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment in streambeds, subsidence, landslides, or water pollution cannot feasibly be prevented, the department shall delete that part of the land described in the application upon which the overburden exists. The burden is on the applicant to demonstrate that any area should not be deleted under this subsection.

(7) If the department finds that the operation will constitute a hazard to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property, the department shall delete those areas from the prospecting, strip-mining, or underground-mining permit application before it can be approved. In no case may strip- or underground-coal-mining be allowed within 300 feet of any occupied dwelling, unless waived by the owner, nor within 300 feet of any public building, school, church, community, or institutional building, or public park; nor within 100 feet of a cemetery; nor within 100 feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join ~~such~~ the right-of-way line. The department may permit ~~such~~ the roads to be relocated or the area affected to lie within 100 feet

of the road if, after public notice and opportunity for public hearing in the locality, a written finding is made that the interests of the public and the landowners affected will be protected.

(8) No strip- or underground-mining may be conducted within 500 feet of active or abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners. The department shall permit an operator to mine near, through, or partially through an abandoned underground mine or closer to an active underground mine if:

(a) the nature, timing, and sequencing of specific strip-mine activities and specific underground-mine activities are jointly approved by the department and the regulatory authority concerned with the health and safety of underground miners; and

(b) ~~such~~ the operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.

(9) The department may not approve an application for a strip- or underground-coal-mining operation if the area proposed to be mined is included within an area designated unsuitable for strip or underground coal mining or within an area under review for this designation under an administrative proceeding, unless in such an area as to

which an administrative proceeding has commenced pursuant to this part, the operator making the permit application demonstrates that prior to January 1, 1977, he the operator made substantial legal and financial commitments in relation to the operation for which he the operator is applying for a permit.

(10) No A permit or major permit revision for a strip- or underground-coal-mining operation may not be issued unless the applicant has affirmatively demonstrated by its coal conservation plan that no failure to conserve coal will not occur. The department may require the applicant to submit any information it considers necessary for review of the coal conservation plan.

(11) Whenever information available to the department indicates that any strip- or underground-coal-mining operation owned or controlled by the applicant or by any person who owns or controls the applicant is currently in violation of Public Law 95-87, as amended, or any state law required by Public Law 95-87, as amended, or any law, rule, or regulation of the United States or of any department or agency in the United States pertaining to air or water environmental protection, the department ~~shall~~ may not issue a strip- or underground-coal-mining permit or major revision until the applicant submits proof that the violation has been corrected or is in the process of being corrected to

the satisfaction of the administering agency.

(12) The department may not issue a strip- or underground-coal-mining permit or major revision to any applicant ~~which~~ that it finds, after an opportunity for hearing, owns or controls any strip- or underground-coal-mining operation ~~which~~ that has demonstrated a pattern of willful violations of Public Law 95-87, as amended, or any state law required by Public Law 95-87, as amended, of ~~such~~ a nature and duration and with ~~such~~ resulting irreparable damage to the environment to indicate an intent not to comply with the provisions of this part.

(13) Subject to valid existing rights, no strip- or underground-coal-mining operations except those ~~which~~ that existed as of August 3, 1977, may be conducted on ~~private~~ lands within the boundaries of units of the national park system, the national wildlife refuge systems, the national wilderness preservation system, the wild and scenic rivers system, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act, or national recreation areas designated by act of congress."

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0171, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:
A bill amending the Montana Strip and Underground Mine Reclamation Act to comply with federal law and regulations. This bill amends the definition of "prospecting", expands the authority to deny a permit on federal land or based on current violations, and corrects grammatical language to make the intent of the act more clear.

ASSUMPTIONS:

1. Montana will continue to implement its program and agreements with the federal government at the same level.
2. No new workload is expected due to these changes.

FISCAL IMPACT: No fiscal impact.

David Lewis 1-19-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Marion H. Hanson
MARION HANSON, PRIMARY SPONSOR DATE

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By DICK KNOX, CHAIRMAN, on January 22, 1993, at 3:00 p.m.

ROLL CALL

Members Present:
Rep. Dick Knox, Chairman (R)
Rep. Rolph Tunby, Vice Chairman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Russ Fagg (R)
Rep. Gary Feland (R)
Rep. Mike Foster (R)
Rep. Bob Gilbert (R)
Rep. Hal Harper (D)
Rep. Scott Orr (R)
Rep. Bob Raney (D)
Rep. Dore Schwinden (D)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Howard Toole (D)
Rep. Doug Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Michael Kakuk, Environmental Quality Council
Roberta Opel, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: HB 171, SB 67
Executive Action: SB 67, HB 64, HB 150

HEARING ON HB 171

Opening Statement by Sponsor:

REP. MARIAN HANSON, HD 100, Ashland, stated she was carrying the legislation on behalf of the Montana Department of State Lands (DSL). The legislation would change state guidelines to comply with federal guidelines for coal and uranium mining. She added this bill amends the current Montana law in three (3) areas:

prospecting, applicant violator system, and operations on federal lands. She noted DSL would also present an amendment to the legislation.

Proponents' Testimony:

Bonnie Lovelace, Chief, Coal and Uranium Bureau, Department of State Lands (DSL), presented specifics in support of HB 171 and the amendments to the legislation. **EXHIBITS 1 and 2**

Jim Mockler, Montana Coal Council, noted the Council's support for HB 171 and the amendment. He issued a word of caution on prohibition of mining in national forests, stating he hoped Montana would continue to adopt the liability for the federal government and not accept the liability for Montana.

Dennis Olson, Northern Plains Resource Council, stated the Council's support of the legislation. He expressed concerns with the amendments for pages 19 and 20, and asked that the words "major revision" be retained in the legislation.

Opponents' Testimony: None.

Closing by Sponsor:

REP. HANSON closed on HB 171 and asked for the committee's support of the legislation and the amendment.

HEARING ON SB 67

Opening Statement by Sponsor:

SEN. WILLIAM "BILL" YELLOWTAIL, SD 50, Wyola, stated the intent of the SB 67 is to maintain the current authority of the Department of Health and Environmental Sciences (DHES) dealing with solid waste management and the collection of solid waste management fees.

Proponents' Testimony:

Peggy Likens, Program Manager, Keep Montana Clean & Beautiful, stated the coalition supports the overall intent of SB 67, but asked the committee to consider striking Subsection 9, lines 4-7, which requires the state to become a clearinghouse for "information on waste reduction and reuse, recycling technology and markets, composting, and household hazardous waste disposal, including chemical compatibility". She noted that various governmental agencies and private organizations provide these services throughout the state. **EXHIBIT 3**

Opponents' Testimony: None.

HOUSE OF REPRESENTATIVES

Natural Resources COMMITTEE

BILL NO.

ROLL CALL DATE 1/22/93

NAME	PRESENT	ABSENT	EXCUSED
Jody Bird	✓		
Vivian Brooke	✓		
Rugg Fagg	✓		
Gary Feland	✓		
Mike Foster	✓		
Bob Gilbert	✓		
Hal Harper	✓		
Scott Orr	✓		
Bob Raney	✓		
Dore Schwinden	✓		
Jay Stovall	✓		
Emily Swanson	✓		
Howard Toole	✓		
Doug Wagner	✓		
Rolph Tunby, Vice Chairman	✓		
Dick Knox, Chairman	✓		

HR:1993

EXHIBIT 1
DATE 1-22-93
HB 171

eve or Wed 1/22/93

TESTIMONY OF BONNIE LOVELACE
CHIEF, COAL AND URANIUM BUREAU
DEPARTMENT OF STATE LANDS
ON
HB171

House Natural Resources Committee, January 22, 1993

The Montana Strip and Underground Mine Reclamation Act (MSUMRA) is the regulatory authority for prospecting and mining of coal and uranium. Through the Department of State Lands, Montana administers its regulatory program on private, state and federal lands. There is also a federal statute regulating coal mining, and Montana's program must be as effective as the Federal program in both its statute and regulations.

The Office of Surface Mining, which is the federal agency that oversees state regulatory programs, has notified the Department that the Montana act is less effective than the federal law in three respects. HB171 cures those defects. The Legislative Council has also made many non-substantive style amendments. The Department's proposed amendments and the reasons for those amendments are as follows:

1. Prospecting - (Page 7, lines 5 and 6, and page 12, line 20 through page 13, line 9.) The current definition of the term "prospecting" in the Montana law is not as broad as the federal definition because it does not include most environmental data gathering activities, such as the drilling of test wells and overburden sampling. The amendment at page 7, lines 5 and 6 brings the statute into compliance with the federal statute. The amendment at page 12, line 20 through page 13, line 9 inserts procedures and reclamation requirements that are the same as the federal law.

2. Applicant Violator System - (Page 19, lines 16 and 17) As a result of extended litigation and settlements between environmental interest groups and the Office of Surface Mining, that agency has developed an extensive computerized database for tracking coal mine violators nationwide and federal regulations have been adopted requiring the filing of detailed ownership and control information for the system. The system is intended to block an operator from violating the law in one state and moving to another and obtaining a permit. The federal rules also apply this prohibition to operators who are controlled by or under common control with an operator who is in violation of an environmental protection law. The Montana statute applies only to the operations owned or controlled by the applicant. The amendment at page 19, lines 16 and 17 brings the Montana statute into compliance with the federal rules.

3. Mining on Federal Lands within National Forests, National Parks, and other Federal Reserves. (Page 20, line 15) The federal law prohibits mining on most federal and private lands within federal reservations, such as national forests. The state law limits that prohibition to private lands within these reserves. The amendment at page 20, line 15 applies the state law to federal lands with these reserves as well.

It has recently been brought to the Department's attention that certain language currently contained in 82-4-227(11) differs from the federal language in that it applies the applicant violator provisions to permit revisions, which do not add acreage to permit areas, and does not apply the system to permit amendments, which do add acreage to permit areas. The federal law does just the opposite. The attached amendment would bring the state statute into compliance with the federal law. The amendments also make the change to 82-4-227(12), which contains the same defect.

The Department respectfully requests the committee to approve HB171 with the Department's proposed amendments.

EXHIBIT 2
DATE 1-22-93
HB 171

DEPARTMENT OF STATE LANDS'

PROPOSED AMENDMENTS

TO HOUSE BILL 171
(Introduced Bill)

1. Page 19, line 23.
Following: "or"
Strike: "major revision"
Insert: "amendment, other than an incidental boundary revision,"

2. Page 20, line 3.
Following: "or"
Strike: "major revision"
Insert: "amendment, other than an incidental boundary revision,"

- END -

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. HB 171

DATE 1-22-93 SPONSOR(S) Hanson

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Jack North	State Lands	✓	
Bonnie Lovelace	State Lands	✓	
Gary Amestoy	State Lands	✓	
Jim Mockler	MT. Coal Council	✓	
Dennis Olson	NPRC	✓ w/ Amend	
Ralph Smith	LandFarm, Inc	✓	
Jon Dilliard	DHES/SHWB		

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By CHAIRMAN DICK KNOX, on January 27, 1993, at 3:00 p.m.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Rolph Tunby, Vice Chairman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Gary Feland (R)
Rep. Mike Foster (R)
Rep. Bob Gilbert (R)
Rep. Hal Harper (D)
Rep. Scott Orr (R)
Rep. Bob Raney (D)
Rep. Dore Schwinden (D)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Howard Toole (D)
Rep. Doug Wagner (R)

Members Excused: Rep. Russ Fagg (R)

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Michael Kakuk, Environmental Quality Council
Roberta Opel, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 205 and HB 192
Executive Action: HB 64 and HB 171

HEARING ON HB 205

Opening Statement by Sponsor:

REP. ED DOLEZAL, HD 34, Great Falls, said HB 205 would eliminate the recreational use license currently required for use of state lands. He noted the $5 recreational use license had been adopted by the 52nd Legislature.

Closing by Sponsor:

REP. FOSTER told the committee that DNRC had decided to walk away from inspections, unlike other agencies willing to take on similar issues. He said the DNRC's position on HB 192 was illogical and irresponsible. He asked how important water storage is to the state? REP. FOSTER explained that the citizens of Montana are saying if they are required to pay for inspection of high hazard dams on their property, they will be unwilling to store water. REP. FOSTER referred to this as bogeyman liability.

EXECUTIVE ACTION ON HB 171

Motion: REP. FAGG MOVED HB 171 DO PASS AS AMENDED. REP. FELAND called for the question.

Discussion: REP. HARPER said he opposed the amendment.

Vote: HB 171 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 64

NOTE: Executive action on HB 64 started on January 20 and was delayed twice, once on January 20 and once on January 22.

Motion/Vote: REP. TUNBY moved to adopt his amendments to HB 64. EXHIBIT 6 Motion carried with REP. RANEY opposed.

Discussion: Michael Kakuk, EQC staff attorney, noted the amendments were committee amendments not EQC staff amendments. EXHIBIT 7 Mr. Kakuk distributed a HB 64 Bill Summary to the committee. EXHIBIT 8

REP. TUNBY stated that fees for solid waste disposal would be established by the Department of Health and Environmental Sciences (DHES).

Motion/Vote: REP. TUNBY MOVED HB 64 DO PASS AS AMENDED. Motion carried 15 to 1 with REP. RANEY opposed.

HOUSE STANDING COMMITTEE REPORT

January 28, 1993

Mr. Speaker: We, the committee on Natural Resources report that House Bill 171 (first reading copy -- white) do pass as amended .

Signed: _____

Dick Knox, Chair

And, that such amendments read:

1. Page 19, line 23.
Following: "or"
Strike: "major revision"
Insert: "amendment, other than an incidental boundary revision,"

2. Page 20, line 3.
Following: "or"
Strike: "major revision"
Insert: "amendment, other than an incidental boundary revision,"

Committee Vote:

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chair Bianchi, on March 12, 1993, at 3:15 p.m.

ROLL CALL

Members Present:
Sen. Don Bianchi, Chair (D)
Sen. Bob Hockett, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Ed Kennedy (D)
Sen. Bernie Swift (R)
Sen. Chuck Swysgood (R)
Sen. Henry McClernan (D)
Sen. Larry Tveit (R)
Sen. Cecil Weeding (D)
Sen. Jeff Weldon (D)

Members Excused: Sen. Steve Doherty (D)

Members Absent: None.

Staff Present: Paul Sihler, Environmental Quality Council
Leanne Kurtz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: HB 64, HB 171, HB 532
Executive Action: HB 171, HB 84, HB 102, HB 30, HB 288, HB 417

HEARING ON HB 64

Opening Statement by Sponsor:

Representative Ed Grady, HD 47, stated HB 64 was introduced because the 1991 Legislature enacted SB 346, establishing a $5 per ton fee on disposal of imported solid waste. He said the fee becomes effective July 1, 1993. Rep. Grady stated several recent United States court rulings and a Board of Appeals ruling on a similar law have increased the likelihood that a $5 fee, if challenged, would be ruled excessive and unconstitutional. He stated EQC's intent in drafting HB 64 was to address the

HEARING ON HB 171

Opening Statement by Sponsor:

Representative Marian Hanson, HD 100, said the Department of State Lands (DSL) requested HB 171. She said the bill brings Montana into compliance with changes the federal government has made in the last 2 years dealing with strip mining and permitting.

Proponents' Testimony:

John North, DSL chief legal counsel, said Montana must comply with the federal strip mining act in order for the state to regulate coal mining. He distributed and discussed his written testimony (Exhibit #2).

Dennis Olson, Northern Plains Resource Council (NPRC), urged the Committee to consider an amendment to make permit amendments subject to the applicant violator system. He said on pages 19 and 20, "major revision" has been stricken, and asked the Committee to reinsert the language. Mr. Olson said the applicant violator system should be kept intact to discourage problems with wildcat operators.

Jim Mockler, executive director, Montana Coal Council, cautioned the Committee that with bills such as HB 171, the legislature is taking the responsibility for denying access to private property. He said the courts have significantly expanded the applicator violator system to the point where the searches are expensive and unreliable. He urged the Committee not to amend the bill.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Senator Bianchi asked Mr. Mockler for clarification on which sections of the bill he wants left intact. Mr. Mockler stated the bill is fine just as it is. He said new permits and major revisions should be subject to the applicator violator system, but minor revisions should not.

Senator McClernan asked Mr. North for clarification on the prospecting language on page 12. Mr. North stated DSL receives petitions designating certain areas unsuitable for coal mining. He said DSL will apply the provision in the bill to prospecting conducted outside the unsuitable area. Mr. North said the full permitting and bonding requirements must be met if prospecting for coal is occurring in an "unsuitable" area.

Senator Kennedy asked Mr. North about NPRC's amendment. Mr. North stated DSL proposed that amendment because the Department must ask the legislature to amend the law every 2 years or it will lose the program. He said it is important the bills pass and be noncontroversial, so DSL presented only those changes that were necessary to comply with federal law. Mr. North stated if the Department wants other kinds of changes, they put them in other bills. He said some members of the coal industry felt HB 171 as introduced went beyond the federal law. Mr. North stated he researched the issue and found that the applicant violator system does not apply to revisions, only to amendments and new permits. He said current law is more stringent than federal law and DSL felt that since it was applying an expanded applicant violator system, revisions should be removed since they are not included in federal law. Mr. North stated DSL does not want the bill amended.

Senator Bianchi asked what the difference is between a revision and an amendment. Mr. North stated a revision is a change within the existing permit boundary and an amendment adds acreage to an existing permit boundary. He added an amendment would require permit review procedures in HB 171, including the applicant violator system, while a revision would not be subject to the applicant violator system.

Senator Bianchi asked Mr. Olson why a revision should be subject to the applicant violator system. Mr. Olson stated a coal permit is renewed every 5 years and goes through the applicant violator check. He said it is important to maintain the applicant violator systems. Senator Bianchi asked for an example of a major revision other than an expansion. Mr. North said the rules define a major revision as something that causes a change in the bonding level or in the post-mining land use or drainage patterns. Mr. North stated existing federal law does not require any revisions to be subject to the applicant violator system.

Closing by Sponsor:

Representative Hanson urged the Committee to concur in HB 171.

EXECUTIVE ACTION ON HB 171

Motion/Vote:

Senator Swift MOVED HB 171 BE CONCURRED IN. Motion CARRIED UNANIMOUSLY, with Senator Doherty absent at the time of the vote. Senator Keating said he would carry the bill on the floor.

ROLL CALL

SENATE COMMITTEE Natural Resources DATE 3/12

NAME	PRESENT	ABSENT	EXCUSED
Sen. Bianchi	✓		
Sen. Hockett	✓		
Sen. Bartlett	✓		
Sen. Doherty	✓		✓
Sen. Grosfield	✓		
Sen. Keating	✓		
Sen. Kennedy	✓		
Sen. Swift	✓		
Sen. Suvsgood	✓		
Sen. McClernan	✓		✓
Sen. Treit	✓		
Sen. Weeding	✓		
Sen. Weldon	✓		

FC8

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

March 13, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 171 (first reading copy -- blue), respectfully report that House Bill No. 171 be concurred in.

Signed: Don Bianchi
Senator Don Bianchi, Chair

Amd. Coord.
Sec. of Senate

Keating
Senator Carrying Bill

571044SC.San

SENATE NATURAL RESOURCES
EXHIBIT NO. 2
DATE 3/12/93
BILL NO. HB 171

TESTIMONY OF JOHN F. NORTH
CHIEF LEGAL COUNSEL
DEPARTMENT OF STATE LANDS
ON
HB171

Senate Natural Resources Committee, March 12, 1993

The Montana Strip and Underground Mine Reclamation Act (MSUMRA) is the regulatory authority for prospecting and mining of coal and uranium. Through the Department of State Lands, Montana administers its regulatory program on private, state and federal lands. There is also a federal statute regulating coal mining, and Montana's program must be as effective as the Federal program in both its statute and regulations.

The Office of Surface Mining, which is the federal agency that oversees state regulatory programs, has notified the Department that the Montana act is less effective than the federal law in three respects. HB171 cures those defects. The Legislative Council has also made many non-substantive style amendments. The Department's proposed amendments and the reasons for those amendments are as follows:

1. Prospecting - (Page 7, lines 5 and 6, and page 12, line 20 through page 13, line 9.) The current definition of the term "prospecting" in the Montana law is not as broad as the federal definition because it does not include most environmental data gathering activities, such as the drilling of test wells and overburden sampling. The amendment at page 7, lines 5 and 6 brings the statute into compliance with the federal statute. The amendment at page 12, line 20 through page 13, line 9 inserts procedures and reclamation requirements that are the same as the federal law.

2. Applicant Violator System - (Page 19, lines 16 and 17) As a result of extended litigation and settlements between environmental interest groups and the Office of Surface Mining, that agency has developed an extensive computerized database for tracking coal mine violators nationwide and federal regulations have been adopted requiring the filing of detailed ownership and control information for the system. The system is intended to block an operator from violating the law in one state and moving to another and obtaining a permit. The federal rules also apply this prohibition to operators who are controlled by or under common control with an operator who is in violation of an environmental protection law. The Montana statute applies only to the operations owned or controlled by the applicant. The amendment at page 19, lines 16 and 17 brings the Montana statute into compliance with the federal rules.

DATE 3/12/93

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: HB64, HB171, HB532

Name	Representing	Bill No.	Check One: Support	Oppose
Edna Vinson	MDT	HB 64		
Mike McLean	Fallon County	HB64/352		
Jim Mockler	MT Coal Council	HB 171	✓	
TERRY COSGROVE	Fallon County	532 HB64		
Tom Ebzery	Nerco Inc	HB 171		
Chris Hallus	MTC	HB 532		
Sen Betty Bruski-Maus	Sen Dist 12	HB 532		~~HB 532~~
Ted Lange	NPRC	HB532		~~HB 532~~ w/amen
Dennis Olso	NPRC	HB 171	w/amen	
John North	State Land	HB 171	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10